

REMARKS/ARGUMENTS

The Office action dated June 9, 2009 has been received and carefully considered. By this amendment, claims 1, 4 and 19 have been amended. After entry of this amendment, claims 1-20 will be pending. In view of the amendments and the following remarks, Applicants respectfully request reconsideration.

35 USC §112

The Office rejected **claims 1 and 4** under 35 USC §112, second paragraph, as being indefinite. The applicant appreciates the examiner's comments, amended claim 4, and provides the following comments:

Claim 1 as currently amended is drawn to food product that includes a preparation of a quick-dried whole coffee cherry. Viewed from a different perspective, the preparation of the quick-dried whole coffee cherry is an ingredient in the food product. Claim 4 as amended is drawn to the food product of claim 1, however, the food product now additionally requires at least one of a bean of the coffee cherry, a pulp of the coffee cherry, a mucilage of the coffee cherry, and a hull of the coffee cherry. Thus, the food product of claim 1 includes further selected ingredients.

Support for the amendment of claim 1 can be found, *inter alia*, on page 10, lines 9-17. Support for the amendment of claim 4 can be found, *inter alia*, on page 3, lines 16-18 or page 8, lines 11-17. In view of the amendments and arguments above, the rejection should now be overcome.

35 USC §102

The Office rejected **claims 1, 4, 6-11, and 19-20** as being anticipated by Sivetz et al. (Coffee Technology). The applicant amended the claims to even more clearly differentiate the claimed subject matter over the cited art and provides the following observations.

Amendments

(a) As amended herein, claim 1 (and claims 4, and 6-11 by virtue of their dependency on amended claim 1) expressly requires a *food product for human consumption that comprises as an*

ingredient a preparation of a quick-dried whole coffee cherry. Moreover, amended claim 1 also requires that the coffee cherry is a *quick-dried whole coffee cherry*. Support for the amendments is provided, for example, on page 10, lines 9-17. These elements are neither taught nor suggested in Sivetz. Indeed, Sivetz only teaches methods of coffee cherry harvest and processing of the cherries prior to roasting of the beans.

(b) Similarly, amended claim 19 (and dependent claim 20) expressly requires *quick-dried* whole coffee cherry that is *dried within 48 hours after harvest to a residual moisture content of no higher than 20% (wt/wt)*. Support for the amendments is provided, for example, on page 5, lines 9-11. These conditions are neither taught nor suggested in Sivetz.

Reply to the Examiner's Arguments

(1) In the office action, the examiner stated that Sivetz would teach a preparation of whole coffee cherries that are harvested in all stages of ripeness, wherein the coffee cherries are quick dried as a whole fruit. With respect to Sivetz's teaching of whole coffee cherries that are harvested in all stages of ripeness, the applicant agrees. However, the applicant respectfully disagrees with the office's position that the cherries would be quick dried. Indeed, the opposite is the case as can be taken, *inter alia*, from page 82, line 5 ("*...Natural coffee must be dried much more slowly...*"), page 86, lines 3-4 ("*...more time is afforded for the coffee to dry partially on the tree...*"), and page 128, line 3 ("*...drying is much slower than with washed coffee...*"). Clearly, Sivetz teaches a slow drying process that is required to produce natural coffee.

Remarkably, it should be noted that Sivetz expressly teaches that slow drying of natural coffee is fraught with difficulties due to microbial infection (*e.g.*, page 128, last paragraph). Such teaching therefore is contrary to the claimed subject matter of amended claims 1 and 20, which require quick-drying under a protocol that achieves specific and very low mycotoxin levels. Moreover, it is noted that amended claim 19 requires that the coffee cherry is quick-dried within 48 hours after harvest to a residual moisture content of no higher than 20% (wt/wt), which is yet again contrary to Sivetz's teaching of slow drying.

(2) The examiner further stated that Sivetz would teach the making of "*...natural coffee, a food product...*" Regardless of the above noted defects in Sivetz, the applicant points out that

the ultimate goal in the Sivetz reference is production of coffee beans, and nothing else as can be readily taken from the chapter title (page 74; "Harvesting And Handling Green Coffee Beans"). Thus, regardless of the particular processing steps (wet/washed process and dry/natural process), it should be appreciated that the pulp, mucilage, and hull, of the coffee cherry are removed to so obtain the coffee bean product that is then dried and roasted.

To even more clearly point out that the claimed subject matter of claim 1 (and claims dependent thereon) is drawn to a food product that includes as an ingredient a preparation of a quick-dried whole coffee cherry, the applicant amended the claim. Thus, even if one would argue that the dried coffee cherries of Sivetz would be a food product, it should be noted that the claims expressly require a food product to which a preparation of a quick-dried whole coffee cherry is added as an ingredient. Such food products are simply neither taught nor suggested.

(3) Regarding the examiner's apparent official notice that the sun drying terrace and the mechanical driers would equate to quick-drying, the same observations as provided above under item (1) apply.

(4) Regarding the examiner's suggestion that the Sivetz would use like materials in a like manner as claimed and as such would achieve the low mycotoxin levels, the applicant points to the amendments and comments above. Furthermore, it is again noted that Sivetz recognizes the microbial infections due to natural processing. Thus, it should be concluded that Sivetz's natural coffee cherries will have a high mycotoxin content, which is contrary to the claimed subject matter.

(5) The examiner appeared to state on page 5, paragraph 10, of the office action that the quantities of mycotoxins in Sivetz would be within that of the claims due to variable sources, ratios, etc. The applicant respectfully disagrees as amended claims 1 and 19 expressly concern the mycotoxin levels in the coffee cherry, which is independent of the level in the food product.

The examiner also made notice of "... the natural presence of a preservative in a coffee cherry..." It is unclear what preservative the office refers to. Indeed, if there were antimicrobial preservatives, Sivetz would not point to microbial infection as noted above. Clarification is respectfully requested.

Finally, the office also argued that as Sivetz failed to expressly teach any levels of mycotoxins and as the claims also included zero ppm/ppb of mycotoxins, the claims would read on Sivetz. The applicant respectfully disagrees as the absence of evidence is not evidence of absence, especially in view of Sivetz's teaching of microbial infection. Anticipation under 35 U.S.C. § 102 requires the presence in a single prior art disclosure of each and every element of a claimed invention. *Verdegaal Bros., Inc. v. Union Oil Co.*, 814 F.2d 628, 631, 2 U.S.P.Q.2D (BNA) 1051, 1053 (Fed. Cir. 1987); *Carella v. Starlight Archery*, 804 F.2d 135, 138, 231 U.S.P.Q. (BNA) 644, 646 (Fed. Cir.), *modified on reh'd*, 1 U.S.P.Q.2D (BNA) 1209 (Fed. Cir. 1986).

(6) As dependent claims 6-11 are directly dependent on amended claim 1, the same defects and arguments apply and are not reiterated here.

Based on the above amendments and arguments, the applicant believes that the rejection of claims 1, 4, 6-11, and 19-20 as being anticipated by Sivetz et al. should be overcome.

35 USC §103

The Office rejected **claims 1-20** as being obvious over Sivetz et al. (Coffee Technology) and Drunen (U.S. Pat. No. 6,572,915) and further view of Johnson (U.S. Pat. No. 2,526,872), Soucy (U.S. Pat. No. 6,202,321), Bucheli et al., Batista et al., Frank Helferich Romani et al. Codex Committee or USDA.

With respect to the defects of Sivetz in light of the amendments to claims 1 and 19, the same considerations as provided above apply and are not reiterated here. The remainder of the cited art fails to remedy these defects, alone or in combination.

(1) The examiner further appeared to argue that "...it would have been obvious...to use the quick dried whole coffee cherry used in making natural coffee foodstuff by Sivetz et al with the claim-designated ingredient to provide the instantly claimed invention..."

It is noted that the office seemed to state that Sivetz would teach a foodstuff. However, such is not the case. All Sivetz teaches is a process of slow drying coffee cherries to produce as

natural coffee. As should be readily apparent from Sivetz and as is well known in the art, natural coffee is brewed from coffee beans, which were obtained using the dry method (see *e.g.*, Sivetz page 79, second paragraph). Thus, it should be clear that Sivetz teaches certain steps towards making of a conventional coffee product, which is inconsistent with the food product that has as an ingredient a preparation made from coffee cherry.

(2) With respect to Batista, Frank, and Helferich, it is pointed out that these references generally teach mycotoxins as known contaminants. However, these references are mainly concerned with the *quality of coffee beans rather than the coffee fruit*. Similarly, Johnston teaches fermentation of the pulped coffee fruit, which is yet again immaterial to the claimed subject matter. Mann is entirely silent on the use of coffee, let alone coffee cherries, and Soucy yet again teaches coffee beans, and not coffee cherries. With respect to the office's apparent parenthetical remark that the coca bean would be a coffee cherry, it is unclear how such position could be sustained. Alternatively, the applicant misunderstood. In that case, clarification is respectfully requested.

Based on the above, none of Batista, Frank, Helferich, Johnston, Helferich, and Soucy (alone or in combination) teach or suggest use of a quick dried coffee cherry as an ingredient in a food product as presently claimed. Batista, Frank, and Helferich are generally concerned with microbial contamination of coffee beans, and Johnston teaches fermentation of already pulped coffee cherries. Soucy is once again concerned with coffee beans, and Mann is entirely silent on the use of coffee.

Drunen fails to remedy this defect. Indeed, all Drunen teaches is use of an extract of what is otherwise a waste product in the manufacture of coffee beans. More specifically, the applicant agrees that the term "coffee cherry" is used in the '915 patent, however, points to column 1, lines 15-21 and column 1, lines 56-58 of the Drunen patent where the term "coffee cherry" is expressly defined:

"... Large quantities of agricultural waste products are generated during crop processing. Typically, these include fruit skin and pits resulting from fruit crops such as peaches, apricots, cherries, plums, etc. or the "coffee cherry" husks that are removed from coffee beans in the processing of coffee..."(column 1, lines 15-21)

"...While any suitable agricultural waste can be used in this novel process, it is particularly applicable to coffee cherries (the pulp that remains after removal of coffee beans)..." (column 1, lines 56-58).

It should be readily apparent from these passages that the term "coffee cherry" in the '915 patent refers to the waste product of the coffee fruit, whereas the applicant expressly defined the term "coffee cherry" as the entire fruit. Thus, Drunen fails to provide the requisite teaching of the whole coffee cherry as instantly claimed.

(3) With respect to independent claim 15 (and claims 16-18 by virtue of their dependence on claim 15) it is noted that the claim is drawn to a tea that is brewed from a comminuted quick-dried whole coffee cherry. In contrast, Drunen teaches a coffee product that includes an extract that is prepared from coffee pulp. Sivetz and the remaining cited art fails to remedy this defect. It should be noted that there is nothing in the cited art that would teach brewing of a quick-dried coffee cherry to so obtain a tea product for human consumption. Sivetz teaches coffee cherry processing in which coffee cherries of varying ripeness stages are dried. However, such drying process is neither a quick-drying process as discussed above, nor is such process used to produce a tea from the dried cherries. Indeed, none of the cited art uses a coffee cherry as an ingredient for an item for human consumption, let alone a quick dried coffee cherry with the mycotoxin levels as presently claimed.

Based on the above amendments and arguments, the applicant believes that the rejection of claims 1-20 as being obvious over Sivetz et al. and Drunen and further view of Johnson, Soucy, Bucheli et al., Batista et al., Frank Helferich Romani et al. Codex Committee or USDA should be overcome.

In the event that the examiner would deem the claims still non-allowable, the undersigned would sincerely appreciate a phone call to discuss the cited art and to help identify allowable subject matter.

Request For Allowance

Claims 1-20 are pending in this application. The applicant requests allowance of all pending claims.

Respectfully submitted,
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